

LINDA CLAXTON, State Bar No. 125729
linda.claxton@ogletreedeakins.com
CHRISTOPHER W. DECKER, State Bar No. 229426
christopher.decker@ogletreedeakins.com
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
633 West Fifth Street, 53rd Floor
Los Angeles, California 90071
Telephone: (213) 239-9800
Facsimile: (213) 239-9045

Attorneys for Defendants
ROYAL BANK OF CANADA, RBC CAPITAL MARKETS
CORPORATION (incorrectly named and sued as "RBC WEALTH
MANAGEMENT COMPANY, formerly RBC DAIN RAUSCHER,
INC."), and THE ROYAL BANK OF CANADA US WEALTH
ACCUMULATION PLAN

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

STEVEN BENHAYON,

Plaintiff,

v.

ROYAL BANK OF CANADA, a
Canadian company, business form
unknown; RBC WEALTH
MANAGEMENT COMPANY, formerly
RBC DAIN RAUSCHER, INC.,
business form unknown; THE ROYAL
BANK OF CANADA US WEALTH
ACCUMULATION PLAN, formerly
known as RBC Dain Rauscher Wealth
Accumulation Plan; and, DOES 1
through 20,

Defendants.

Case No. CV08-06090 FMC (AGR_x)

**DEFENDANTS' ANSWER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

Action Filed: September 17, 2008
Trial Date: None Set

1 Defendants Royal Bank of Canada (“RBC”), the Royal Bank of Canada U.S.
2 Wealth Accumulation Plan (“the Plan”), and RBC Capital Markets Corporation
3 (“RBCCMC”) (incorrectly named and sued as “RBC WEALTH MANAGEMENT
4 COMPANY, formerly RBC DAIN RAUSCHER, INC.”), hereby answer Plaintiff
5 Steven Benhayon’s (“Plaintiff”) First Amended Complaint (the “Complaint”) as
6 follows:

7 1. With regard to the averments contained in paragraph 1, Defendants are
8 without sufficient information or knowledge to form a belief as to Plaintiff’s residence
9 or age, and on that basis deny same.

10 2. Defendants admit the averments contained in paragraph 2.

11 3. Defendants deny that the entity formerly known as “RBC Dain Rauscher,
12 Inc” has changed its name to “RBC Wealth Management Company.” Defendants
13 admit the remaining averments of paragraph 3.

14 4. Defendants admit the existence of the Royal Bank of Canada U.S. Wealth
15 Accumulation Plan, formerly known as the RBC Dain Rauscher Wealth Accumulation
16 Plan, and that Plaintiff was formerly a participant in the Plan. Defendants further
17 admit that Exhibit A to the Complaint is an accurate copy of the April 1, 2003
18 Summary Description and Prospectus for the Plan. Defendants deny that the Plan is a
19 legal entity with the capacity to be sued, as it is a compensation program which is not
20 covered by the Employee Retirement Income Security Act of 1974, as amended. The
21 averments of paragraph 4 regarding the provisions of the Employee Retirement
22 Income Security Act of 1974, as amended, state legal conclusions to which no
23 response is required. Defendants deny the remaining averments of paragraph 4.

24 5. Defendants are without sufficient information or knowledge to form a
25 belief as to the truth of the averments of paragraph 5 of the Complaint, and on that
26 basis deny same.

27 6. Defendants deny the averments of paragraph 6 of the Complaint.

28 7. Defendants are without sufficient information or knowledge to form a

1 belief as to the truth of the averments of paragraph 7 of the Complaint, and on that
2 basis deny same.

3 8. Paragraph 8 of the Complaint states legal conclusions to which no
4 response is required.

5 9. Paragraph 9 of the Complaint states legal conclusions to which no
6 response is required.

7 10. Paragraph 10 of the Complaint states legal conclusions to which no
8 response is required.

9 11. Defendants RBCCMC and the Plan deny the averments of paragraph 11
10 of the Complaint. Defendant RBC lacks information or knowledge sufficient to form
11 a belief as to the truth of the averments of paragraph 11 of the Complaint and on that
12 basis denies same.

13 12. Defendants RBCCMC and the Plan admit that correspondence was
14 exchanged between representatives of the Plan and Plaintiff's authorized representative
15 on the dates identified. Defendants RBCCMC and the Plan deny that this exchange
16 constituted a claim for benefits pursuant to the Plan or an appeal from the denial of a
17 claim for benefits under the Plan. Defendants RBCCMC and the Plan lack information
18 or knowledge sufficient to form a belief as to the truth of the averments of paragraph 12
19 of the Complaint insofar as they pertain to RBC and on that basis denies same.
20 Defendant RBC denies the averments of paragraph 12 of the Complaint insofar as they
21 pertain to RBC. Defendant RBC lacks information or knowledge sufficient to form a
22 belief as to the truth of the averments of paragraph 12 of the Complaint insofar as they
23 pertain to RBCCMC or the Plan and on that basis denies same.

24 13. Defendant RBCCMC is without sufficient information or knowledge to
25 form a belief as to whether Plaintiff has received a right to sue notice from the United
26 States Equal Opportunity Commission and on that basis denies same. Defendant
27 RBCCMC admits the remaining averments of paragraph 13 of the Complaint.
28 Defendants RBC and the Plan lack information or knowledge sufficient to form a

1 belief as to the truth of any of the averments of paragraph 13 of the Complaint and on
2 that basis deny same.

3 14. Defendants RBCCMC and RBC admit that RBCCMC can be found in
4 this judicial district. Defendants RBCCMC and RBC deny that RBC can be found in
5 this judicial district. All Defendants deny that the Plan can be found in this judicial
6 district, on the grounds that it is not a legal entity which can be sued because it is a
7 compensation program which is not subject to the Employee Retirement Income
8 Security Act of 1974, as amended. The Plan lacks information or knowledge sufficient
9 to form a belief as whether any other defendant can be found in this judicial district
10 and on that basis denies the averments of paragraph 14 regarding same

11 15. Defendants incorporate by reference their responses to paragraphs 1
12 through 14, above, as if fully set forth herein.

13 16. Defendants RBCCMC and the Plan admit that Plaintiff was employed by
14 RBCCMC or a predecessor or related entity from November 8, 1990 until September
15 17, 2007. Defendants RBCCMC and the Plan further admit that Plaintiff was eligible
16 to participate in the Plan at certain times during his employment. Defendants
17 RBCCMC and the Plan deny the remaining averments of paragraph 16 of the
18 Complaint. Defendant RBC lacks information sufficient to form a belief as to the
19 truth of any of the allegations of paragraph 16 of the Complaint and on that basis
20 denies same.

21 17. Defendants RBCCMC and the Plan admit that Plaintiff was hired by
22 RBCCMC or a predecessor or related entity on or about November 8, 1990.
23 Defendants RBCCMC and the Plan deny the remaining averments of paragraph 17.
24 Defendant RBC lacks information sufficient to form a belief as to the truth of any of
25 the allegations of paragraph 17 of the Complaint and on that basis denies same.

26 18. Defendants RBCCMC and the Plan admit that Plaintiff's employment
27 with RBCCMC or a predecessor or related entity ended on September 17, 2007.
28 Defendants RBCCMC and the Plan deny the remaining averments of paragraph 18

1 insofar as they pertain to themselves. Defendants RBCCMC and the Plan lack
2 information or knowledge sufficient to form a belief as the remaining averments of
3 paragraph 18 insofar as they pertain to any other defendant and on that basis deny
4 same. Defendant RBC denies the averments of paragraph 18 in their entirety insofar
5 as they pertain to RBC. Defendant RBC lacks information or knowledge sufficient to
6 form a belief as any of the averments of paragraph 18 insofar as they pertain to any
7 other defendant and on that basis denies same.

8 19. Defendants RBCCMC and the Plan deny the averments of paragraph 19.
9 Defendant RBC lacks information or knowledge sufficient to form a belief as to the
10 truth of the averments of paragraph 19 and on that basis denies same.

11 20. Defendants RBCCMC and the Plan deny the averments of paragraph 20.
12 Defendant RBC lacks information or knowledge sufficient to form a belief as to the
13 truth of the averments of paragraph 20 and on that basis denies same.

14 21. Defendant RBCCMC denies the averments of paragraph 21 insofar as
15 they pertain to RBCCMC or the Plan. Defendant RBCCMC lacks information or
16 knowledge sufficient to form a belief as the truth of the averments of paragraph 21
17 insofar as they pertain to any other defendant and on that basis denies same.
18 Defendants RBC and the Plan deny the averments of paragraph 21 insofar as they
19 pertain to themselves. Defendants RBC and the Plan lack information or knowledge
20 sufficient to form a belief as to the truth of the averments of paragraph 21 insofar as
21 they pertain to any other defendant and on that basis deny same.

22 22. Defendant RBCCMC denies the averments of paragraph 22 insofar as
23 they pertain to RBCCMC or the Plan. Defendant RBCCMC lacks information or
24 knowledge sufficient to form a belief as the truth of the averments of paragraph 22
25 insofar as they pertain to any other defendant and on that basis denies same.
26 Defendants RBC and the Plan deny the averments of paragraph 22 insofar as they
27 pertain to themselves. Defendants RBC and the Plan lack information or knowledge
28 sufficient to form a belief as to the truth of the averments of paragraph 22 insofar as

1 they pertain to any other defendant and on that basis deny same.

2 23. Defendants RBCCMC and the Plan deny the averments of paragraph 23
3 of the Complaint. Defendant RBC lacks information or knowledge sufficient to form
4 a belief as to the truth of the averments of paragraph 23 and on that basis denies same.

5 24. Defendants RBCCMC denies the averments of paragraph 24 insofar as
6 they pertain to RBCCMC or the Plan. Defendant RBCCMC lacks information or
7 knowledge sufficient to form a belief as to the truth of the averments of paragraph 24
8 insofar as they pertain to any other defendant and on that basis denies same.

9 Defendants RBC and the Plan deny the averments of paragraph 24 of the Complaint
10 insofar as they pertain to themselves. Defendants RBC and the Plan lack information
11 or knowledge sufficient to form a belief as to the truth of the averments of paragraph
12 24 insofar as they pertain to any other defendant and on that basis deny same.

13 25. Defendants RBCCMC denies the averments of paragraph 25 insofar as
14 they pertain to RBCCMC or the Plan. Defendant RBCCMC lacks information or
15 knowledge sufficient to form a belief as to the truth of the averments of paragraph 25
16 insofar as they pertain to any other defendant and on that basis denies same.

17 Defendants RBC and the Plan deny the averments of paragraph 25 of the Complaint
18 insofar as they pertain to themselves. Defendants RBC and the Plan lack information
19 or knowledge sufficient to form a belief as to the truth of the averments of paragraph
20 25 insofar as they pertain to any other defendant and on that basis deny same.

21 26. Defendant incorporates by reference its responses to paragraphs 1 through
22 25, above, as if fully set forth herein.

23 27. Paragraph 27 states legal conclusions to which no response is required.

24 28. Defendants RBCCMC and the Plan admit that Plaintiff's employment
25 with RBCCMC or a predecessor or related entity ended on September 17, 2007.

26 Defendants RBCCMC and the Plan deny the remaining averments of paragraph 28
27 insofar as they pertain to themselves. Defendants RBCCMC and the Plan lack
28 information or knowledge sufficient to form a belief as the averments of paragraph 28

1 insofar as they pertain to any other defendant and on that basis deny same. Defendant
2 RBC denies the averments of paragraph 28 in their entirety insofar as they pertain to
3 RBC. Defendant RBC lacks information or knowledge sufficient to form a belief as to
4 the truth of any of the averments of paragraph 28 insofar as they pertain to any other
5 defendant and on that basis denies same.

6 29. Defendant RBCCMC denies the averments of paragraph 29 insofar as
7 they pertain to RBCCMC or the Plan. Defendant RBCCMC lacks information or
8 knowledge sufficient to form a belief regarding the motives or actions of any other
9 defendant and on that basis denies the averments of paragraph 29 insofar as they
10 pertain to any other defendant. Defendants RBC and the Plan deny the averments of
11 paragraph 29 insofar as they pertain to themselves. Defendants RBC and the Plan lack
12 information or knowledge sufficient to form a belief regarding the motives or actions
13 of any other defendant and on that basis denies the averments of paragraph 29 insofar
14 as they pertain to any other defendant.

15 30. Defendant RBCCMC denies the averments of paragraph 30 insofar as
16 they pertain to RBCCMC or the Plan. Defendant RBCCMC lacks information or
17 knowledge sufficient to form a belief regarding the motives or actions of any other
18 defendant and on that basis denies the averments of paragraph 30 insofar as they
19 pertain to any other defendant. Defendants RBC and the Plan deny the averments of
20 paragraph 30 insofar as they pertain to themselves. Defendants RBC and the Plan lack
21 information or knowledge sufficient to form a belief regarding the motives or actions
22 of any other defendant and on that basis denies the averments of paragraph 30 insofar
23 as they pertain to any other defendant.

24 31. Defendant RBCCMC denies the averments of paragraph 31 insofar as
25 they pertain to RBCCMC or the Plan. Defendant RBCCMC lacks information or
26 knowledge sufficient to form a belief regarding the consequences of the actions of any
27 other defendant and on that basis denies the averments of paragraph 31 insofar as they
28 pertain to any other defendant. Defendants RBC and the Plan deny the averments of

1 paragraph 31 insofar as they pertain to themselves. Defendants RBC and the Plan lack
2 information or knowledge sufficient to form a belief regarding the motives or actions
3 of any other defendant and on that basis deny the averments of paragraph 31 insofar as
4 they pertain to any other defendant.

5 32. Defendant RBCCMC denies the averments of paragraph 32 insofar as
6 they pertain to RBCCMC or the Plan. Defendant RBCCMC lacks information or
7 knowledge sufficient to form a belief regarding the consequences of the actions of any
8 other defendant and on that basis denies the averments of paragraph 32 insofar as they
9 pertain to any other defendant. Defendants RBC and the Plan deny the averments of
10 paragraph 32 insofar as they pertain to themselves. Defendants RBC and the Plan lack
11 information or knowledge sufficient to form a belief regarding the motives or actions
12 of any other defendant and on that basis deny the averments of paragraph 32 insofar as
13 they pertain to any other defendant.

14 33. Defendants deny the averments of paragraph 33.

15 34. Defendants incorporate by reference its responses to paragraphs 1 through
16 33, above, as if fully set forth herein.

17 35. Paragraph 35 states a legal conclusion to which no response is required.

18 36. Defendant RBCCMC denies the averments of paragraph 36 insofar as
19 they pertain to RBCCMC or the Plan. Defendant RBCCMC lacks information or
20 knowledge sufficient to form a belief regarding the actions of any other defendant and
21 on that basis denies the averments of paragraph 36 insofar as they pertain to any other
22 defendant. Defendants RBC and the Plan deny the averments of paragraph 36 insofar
23 as they pertain to themselves. Defendants RBC and the Plan lack information or
24 knowledge sufficient to form a belief regarding the motives or actions of any other
25 defendant and on that basis deny the averments of paragraph 36 insofar as they pertain
26 to any other defendant.

27 37. Defendant RBCCMC denies the averments of paragraph 37 insofar as
28 they pertain to RBCCMC or the Plan. Defendant RBCCMC lacks information or

1 knowledge sufficient to form a belief regarding the actions of any other defendant and
2 on that basis denies the averments of paragraph 37 insofar as they pertain to any other
3 defendant. Defendants RBC and the Plan deny the averments of paragraph 36 insofar
4 as they pertain to themselves. Defendants RBC and the Plan lack information or
5 knowledge sufficient to form a belief regarding the motives or actions of any other
6 defendant and on that basis deny the averments of paragraph 37 insofar as they pertain
7 to any other defendant.

8 38. Defendants admit the existence of California Labor Code section 201, the
9 terms of which speak for themselves. Defendant RBCCMC denies the remaining
10 averments of paragraph 37 insofar as they pertain to RBCCMC or the Plan. Defendant
11 RBCCMC lacks information or knowledge sufficient to form a belief regarding the
12 actions of any other defendant and on that basis denies the remaining averments of
13 paragraph 38 insofar as they pertain to any other defendant. Defendants RBC and the
14 Plan deny the remaining averments of paragraph 38 insofar as they pertain to
15 themselves. Defendants RBC and the Plan lack information or knowledge sufficient to
16 form a belief regarding the motives or actions of any other defendant and on that basis
17 deny the remaining averments of paragraph 38 insofar as they pertain to any other
18 defendant.

19 39. Defendants admit the existence of the California Fair Employment and
20 Housing Act, California Government Code section 12920 *et seq.*, the terms of which
21 speak for themselves. Defendant RBCCMC denies the remaining averments of
22 paragraph 39 insofar as they pertain to RBCCMC or the Plan. Defendant RBCCMC
23 lacks information or knowledge sufficient to form a belief regarding the actions of any
24 other defendant and on that basis denies the remaining averments of paragraph 39
25 insofar as they pertain to any other defendant. Defendants RBC and the Plan deny the
26 remaining averments of paragraph 39 insofar as they pertain to themselves.
27 Defendants RBC and the Plan lack information or knowledge sufficient to form a
28 belief regarding the motives or actions of any other defendant and on that basis deny

1 the remaining averments of paragraph 39 insofar as they pertain to any other
2 defendant.

3 40. Defendants admit the existence of the Age Discrimination in Employment
4 Act, 29 U.S.C. section 621 *et seq.*, the terms of which speak for themselves.
5 Defendant RBCCMC denies the remaining averments of paragraph 40 insofar as they
6 pertain to RBCCMC or the Plan. Defendant RBCCMC lacks information or
7 knowledge sufficient to form a belief regarding the actions of any other defendant and
8 on that basis denies the remaining averments of paragraph 40 insofar as they pertain to
9 any other defendant. Defendants RBC and the Plan deny the remaining averments of
10 paragraph 38 insofar as they pertain to themselves. Defendants RBC and the Plan lack
11 information or knowledge sufficient to form a belief regarding the motives or actions
12 of any other defendant and on that basis deny the remaining averments of paragraph
13 40 insofar as they pertain to any other defendant.

14 41. Paragraph 41 states a legal conclusion to which no response is required.

15 42. Defendant RBCCMC denies the averments of paragraph 42 insofar as
16 they pertain to RBCCMC or the Plan. Defendant RBCCMC lacks information or
17 knowledge sufficient to form a belief regarding the actions of any other defendant and
18 on that basis denies the averments of paragraph 42 insofar as they pertain to any other
19 defendant. Defendants RBC and the Plan deny the averments of paragraph 42 insofar
20 as they pertain to themselves. Defendants RBC and the Plan lack information or
21 knowledge sufficient to form a belief regarding the motives or actions of any other
22 defendant and on that basis deny the averments of paragraph 42 insofar as they pertain
23 to any other defendant.

24 43. Defendant RBCCMC denies the averments of paragraph 43 insofar as
25 they pertain to RBCCMC or the Plan. Defendant RBCCMC lacks information or
26 knowledge sufficient to form a belief regarding the actions of any other defendant and
27 on that basis denies the averments of paragraph 43 insofar as they pertain to any other
28 defendant. Defendants RBC and the Plan deny the averments of paragraph 43 insofar

1 as they pertain to themselves. Defendants RBC and the Plan lack information or
2 knowledge sufficient to form a belief regarding the motives or actions of any other
3 defendant and on that basis deny the averments of paragraph 43 insofar as they pertain
4 to any other defendant.

5 44. Defendant RBCCMC denies the averments of paragraph 44 insofar as
6 they pertain to RBCCMC or the Plan. Defendant RBCCMC lacks information or
7 knowledge sufficient to form a belief regarding the actions of any other defendant and
8 on that basis denies the averments of paragraph 44 insofar as they pertain to any other
9 defendant. Defendants RBC and the Plan deny the averments of paragraph 44 insofar
10 as they pertain to themselves. Defendants RBC and the Plan lack information or
11 knowledge sufficient to form a belief regarding the motives or actions of any other
12 defendant and on that basis deny the averments of paragraph 44 insofar as they pertain
13 to any other defendant.

14 45. The remaining averments in the Complaint constitute Plaintiff's prayer
15 for relief and therefore no response is required. Defendant denies that Plaintiff is
16 entitled to the relief requested, or any relief, in this action.

17 **FIRST AFFIRMATIVE DEFENSE**

18 46. Plaintiff's claims against Defendant, and each of them, are barred by his
19 failure to allege facts sufficient to constitute a cause of action.

20 **SECOND AFFIRMATIVE DEFENSE**

21 47. Plaintiff's claims against the Plan, and each of them, are barred because
22 Defendant is not a legal entity with the capacity to be sued.

23 **THIRD AFFIRMATIVE DEFENSE**

24 48. Plaintiff's Complaint fails to state facts sufficient to support a claim for
25 punitive damages under applicable law.

26 **FOURTH AFFIRMATIVE DEFENSE**

27 49. Defendant is informed and believes, and on that basis alleges, that
28 Plaintiff has failed to take reasonable steps to mitigate his damages, if any.

1 Accordingly, Plaintiff is barred from recovering any damages, or any recovery of
2 damages must be reduced.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 50. Plaintiff's claims against Defendant are barred, in whole or in part, by the
5 applicable statutes of limitations.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 51. Plaintiff's claims for emotional injuries allegedly suffered as a result of
8 his employment or the termination thereof are barred, in that his sole and exclusive
9 remedy for any such purported injuries is governed by the California's Workers
10 Compensation Act, California Labor Code §§ 3600 et seq.

11 **SEVENTH AFFIRMATIVE DEFENSE**

12 52. Plaintiff's claims against Defendant are barred, in whole or in part, by the
13 doctrine of avoidable consequences.

14 **EIGHTH AFFIRMATIVE DEFENSE**

15 53. Plaintiff's claims against Defendant are barred, in whole or in part,
16 because Plaintiff has suffered no legally cognizable damages as a result of the matters
17 he alleges in the Complaint.

18 **NINTH AFFIRMATIVE DEFENSE**

19 54. Plaintiff's claims against Defendant are barred, in whole or in part,
20 because there were good and sufficient lawful causes and reasons for any alleged
21 adverse employment actions that affected Plaintiff.

22 **TENTH AFFIRMATIVE DEFENSE**

23 55. Plaintiff's claims against Defendant are barred, in whole or in part,
24 because Plaintiff has failed to exhaust the administrative remedies available to him, as
25 required by applicable law.

26 **ELEVENTH AFFIRMATIVE DEFENSE**

27 56. Plaintiff's claims against Defendant are barred, in whole or in part,
28 because Defendant's conduct was a just and proper exercise of managerial discretion,

undertaken for fair and honest reasons, comporting with good faith under the circumstances then existing, and was privileged and justified.

TWELFTH AFFIRMATIVE DEFENSE

57. Plaintiff's claims for tort damages and punitive damages are barred by the contract clause (Article I, Section 10, clause 1), the due process clause (Fifth Amendment, Fourteenth Amendment, Section 1), and the excessive fines clause (Eighth Amendment) of the United States Constitution, and the corresponding provisions of the Constitution of the State of California.

THIRTEENTH AFFIRMATIVE DEFENSE

58. Any non-economic damages, if any, sustained by Plaintiff were due to the fault of someone other than Defendant, and under the Fair Responsibility Act of 1986, Cal. Civil Code § 1431.2, Defendant can only be held liable for those non-economic damages, if any, proportionally caused by the fault of Defendant.

FOURTEENTH AFFIRMATIVE DEFENSE

59. Plaintiff's claims against Defendant are barred, in whole or in part, because his employment was at all times terminable at-will.

FIFTEENTH AFFIRMATIVE DEFENSE

60. Defendant alleges that Plaintiff's Complaint, and each and every cause of action asserted therein, is barred to the extent that Plaintiff, by reason of his own conduct and actions, has waived any of his purported causes of action against Defendant.

SIXTEENTH AFFIRMATIVE DEFENSE

61. Defendant alleges that the Complaint, and each and every cause of action asserted therein, is barred by the doctrine of estoppel.

SEVENTEENTH AFFIRMATIVE DEFENSE

62. Defendant alleges that the Complaint, and each and every cause of action asserted therein, is barred by the doctrine of unclean hands.

EIGHTEENTH AFFIRMATIVE DEFENSE

63. Defendant alleges that at all times relevant hereto, it acted without malice and with the good faith belief in the propriety of its conduct.

NINETEENTH AFFIRMATIVE DEFENSE

64. Plaintiff's claims are barred by the doctrine of laches.

TWENTIETH AFFIRMATIVE DEFENSE

65. Plaintiff's claims are against Defendant barred, in whole or in part, because the Plan is not subject to the provisions of Employee Retirement Income Security Act of 1974, as amended.

TWENTY-FIRST AFFIRMATIVE DEFENSE

66. Plaintiff's claims against Defendant are barred, in whole or in part, because they are preempted by the provisions of Employee Retirement Income Security Act of 1974, as amended.

WHEREFORE, Defendant prays as follows:

1. That Plaintiff take nothing by this action;
2. That judgment be entered in favor of Defendant;
3. For costs of suit and for attorneys' fees incurred; and
4. For such other and further relief as the Court deems just and proper.

DATED: January 13, 2009

OGLETREE, DEAKINS, NASH, SMOAK
& STEWART, P.C.

By: /s/ Christopher Decker
Christopher W. Decker
Attorneys for Defendants
ROYAL BANK OF CANADA, RBC
CAPITAL MARKETS CORPORATION
(incorrectly named and sued as "RBC
WEALTH MANAGEMENT COMPANY,
formerly RBC DAIN RAUSCHER, INC."),
and THE ROYAL BANK OF CANADA US
WEALTH ACCUMULATION PLAN